IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-341-1992 (O&M)
Reserved on: 21.03.2023
Date of pronouncement: 23.03.2023

Manjit Hosiery Mills and others

...Appellants

Versus

State Bank of India

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Satinder Khanna, Advocate for the appellants.

None for the respondent.

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H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff State Bank of India having its head office at Sector 17, Chandigarh and one of its branches at Civil Lines, Ludhiana had brought a suit for recovery of Rs.1,28,879.86/- against defendants M/s Manjit Hosiery Mills, Ludhiana and its partners namely Manjit Singh, Amolak Singh, Manmohan Singh, on the averments that at request of defendant No.1 concern and its partners defendants No.2 to 4, the plaintiff-bank granted a cash credit facility to them on the defendants executing necessary security documents of the bank and furnishing security/pledge of stocks of wool tops, woolen yarn, woolen hosiery goods, acrylic yarn etc.; the cash credit limit granted was to the extent of Rs.50,000/-; the defendants had agreed to pay the dues with interest; the defendants had completed the requisite documentation of the bank and had furnished equitable mortgage of properties also; as a matter of fact, the defendants had availed of following credit facilities of the total value of Rs.2,75,000/-:-

a.	Cash credit lock and key account	Rs.1,60,000/-
b.	Cash credit factory type account	Rs.40,000/-
c.	Cash credit packing credit account	Rs.50,000/-
d.	Cash credit DBD account	Rs.25,000/-

The equitable mortgage created was over house No.B, IV 514 (Old) /B.V. S 12/1304 (new) measuring 40-4/9 sq. yards, situated at Brahampuri, Ludhiana; the defendants had been availing of the credit facility and executing the necessary documents from time to time, however, a sum of Rs.1,28,879.86/- was due from them to plaintiff-bank on 31.08.1981 which they failed to pay giving rise to a cause of action to the plaintiff to bring the suit in question.

2. On being given notice, the defendants appeared and filed a written statement, contesting the suit, raising various legal objections contending that the plaintiff had not given permission to the defendants to file a suit against insurance company; a sum of Rs.1,28,879.86/- was not due from the defendants to plaintiff rather due amount was somewhere near Rs.50,000/-; the defendants had hypothecated goods worth Rs.35,500/- with the plaintiff, however, an amount of Rs.23,500/- was deposited with the plaintiff and after adjustment of that amount, nothing remained due except the interest. According to the defendants, the plaintiff has wrongly consolidated three accounts. On merits, the defendants admitted that defendants No.2 and 4 are partners of defendant No.1 but they denied that defendant No.3 is having that status; they admitted that a limit of Rs.50,000/- was sanctioned in their favour by the plaintiff; they came up with a plea that they had supplied the goods to a customer namely M/s Kay Gee enterprises, Dubai for Rs.35,500/- in Indian currency, vide invoice No.1010 dated 11.12.1974 and 1011 dated 13.12.1974 respectively; the goods were sent through railway vide RRs; those RRs/invoices were handed over by the defendants to the plaintiff and the plaintiff sent those RRs to their clearing agents M/s Mani Lal Patel and Company, Bombay; M/s Mani Lal Patel took delivery from the railways of the goods intact; however, when the custom authorities checked the goods, it transpired that those were short; thereafter custom authorities started their proceedings under Custom Act which remained pending; since the goods were insured with insurance company, the plaintiff was required to file a claim with the insurance company and in turn had to give permission to the defendants to clear the shortage from insurance company by way of filing a suit but it was not so done by the plaintiff; as a matter of fact, upto 31.03.1975, a sum of Rs.45,786.11/- was due and Rs.39,500/- was paid upto 31.03.1978; the defendants denied that any equitable mortgage was created by Amolak Singh defendant; they disputed their signatures on various documents while coming up with a prayer for dismissal of the suit.

3. From the pleadings of the parties, following issues were framed:-

1. Whether the defendant kept availing of the financial accommodation from the plaintiff and operated their accounts after giving credits against payment made from time to time by the defendant firm leaving a debit balance exceeding Rs.8491.43/- in between the year 1973 to 1976, if so its effect? OPP
2. Whether Amolak Singh created an equitable mortgage of the property described in para 9 of the plaint by way of collateral security or the amounts due to the plaintiff bank from the defendant firm against the credit facilities referred to therein and the same along with letter dated 03.04.1978 of the defendant firm constituted a continuing security for payment of the outstanding cash credit lock & key account cash credit factory type account cash credit packing credit account, cash credit D.B. account of the defendant firm? If so its effect? OPP.
3. Whether Amolak Singh defendant No.2 was a partner of the defendant firm and he had been jointly operating the account of the defendant firm. If so its effect? OPP.
4. Whether the present suit for the recovery of the outstanding amount from the Cash Credit Account over draft account cash credit account secured by pledge/hypothecation of security, the cash credit account secured by pledge/hypothecation of securities, cash credit secured by demand promissory note dated 30.07.73 are within the period of limitation? OPP.
5. Whether the defendants had agreed to enhancement of the

rates of interest from time to time as alleged in para No.18 of the plaint? OPP.

6. Whether the plaintiff bank did not permit the defendant firm from proceeding against the United Insurance Company for the loss of the good sent vide RR No.325743 dated 12.1.74 and RR No.326569 dated 9.12.76 as alleged in para No.6 of the written statement on merits? If so its effect? OPD.
7. Whether the plaint of the suit had been signed by a duly authorized agent of the plaintiff bank? OPP.
8. Whether the plaintiff bank is not entitled to consolidate the three account L&K, P&C and F&T? If so its effect? OPD.
9. Relief.

4. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Sub Judge, Ist Class, Ludhiana gave issue-wise findings and vide judgment and decree dated 09.03.1984, the suit of the plaintiff for recovery of Rs. 1,28,879.86/- was decreed with interest @ 14% p.a., and future interest at the same rate besides costs of the suit. The defendants were held to be jointly and severally liable to pay the amount. It was further observed that plaintiff could recover the amount by sale of mortgaged property.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendants had preferred an appeal before District Judge, Ludhiana, that appeal was assigned to Addl. District Judge, Ludhiana, who vide judgment and decree dated 22.08.1991 had dismissed the appeal, in the process affirming the judgment and decree passed by the trial Court.

7**.** Still feeling aggrieved, the defendants have approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiff, who had initially put in appearance but subsequently absented.

8. Since the case relates to the year 1992, I proceed to decide it after hearing counsel for the appellants and going through the record.

9. In this case, both the Courts below, keeping in view the pleadings of the parties, evidence brought on record by the contestants as well as in the light of the factual and legal position, have returned concurrent findings that defendants had availed of the credit facilities from the plaintiff as claimed by the plaintiff, executing all necessary security documents including creating equitable mortgage over a house and furnishing security hypothecation/security of stock etc., however, they had committed defaults, resultantly, the suit amount became due from them and they were liable to pay the same. Though the defendants had tried to build up a case that they had suffered financial loss due to shortage being detected by the custom authorities in the consignment sent by them and the insurance company would have been liable to make good that loss but since invoices were in the name of the plaintiff-bank, the defendants could not directly file a suit and required permission of the plaintiff-bank for doing so which was not granted, as such, the defendants incurred financial loss and the plaintiff is liable to make good loss to them. However, their such case was found to be without any merit and was rejected by both the Courts below.

10. I find that the judgments passed by the Courts below are based upon proper appraisal, appreciation of evidence and correct interpretation of law. The suit of the plaintiff was rightly decreed by the trial Court and learned Addl. District Judge, Ludhiana was fully justified in upholding that judgment and decree passed by the trial Court. There is no illegality or infirmity in the impugned judgments. No substantial question of law arises in this appeal. There is no merit in the present Regular Second Appeal. The same stands dismissed accordingly.

23.03.2023 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No